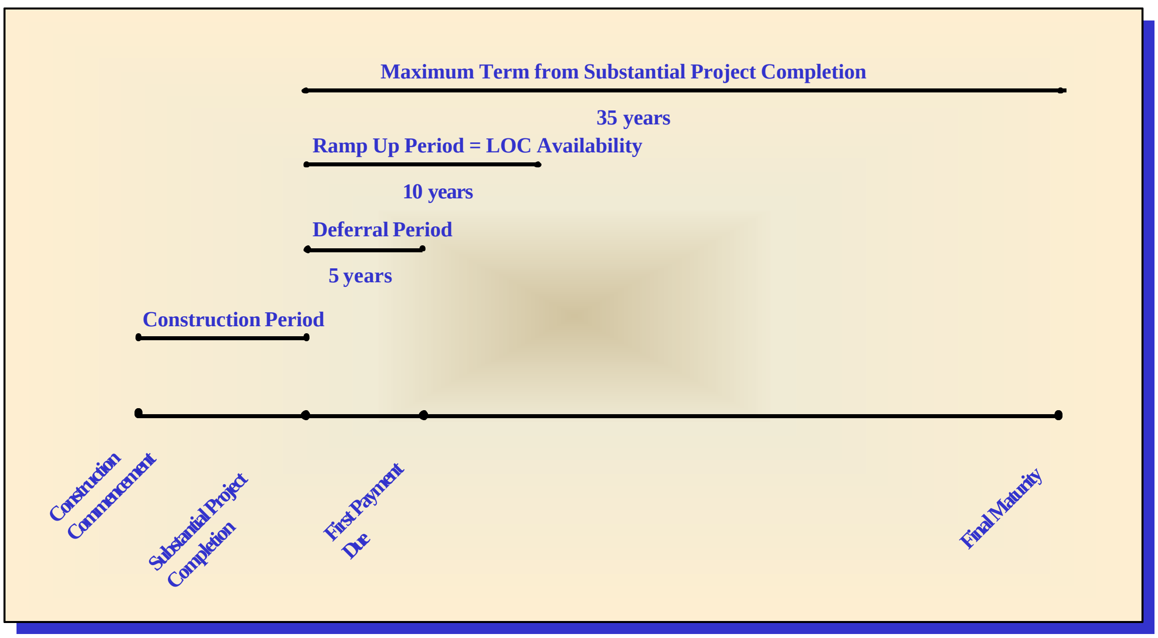
Chapter 2: Terms and Funding of Credit Instruments

The TIFIA program's direct loans, loan guarantees, and standby lines of credit may offer more flexible repayment terms and potentially more favorable interest rates than can be found in private credit markets for similar instruments. This chapter summarizes the required terms that apply generally to TIFIA credit assistance and describes the major features of each credit instrument. The chapter also provides an explanation of the dual funding controls that govern the amount of credit assistance available under the TIFIA program.

Section 2-1
Summary of Basic Terms for TIFIA Credit Assistance

Certain features of TIFIA credit assistance are the same regardless of whether the credit instrument is a direct loan, loan guarantee, or line of credit. For example, the maximum maturity of all TIFIA credits is 35 years after a project's substantial completion. Exhibit 2-A provides an illustrative TIFIA payment structure for any of the three credit instruments.

Exhibit 2-A: Illustrative TIFIA Payment Structure as Permitted by Statute



It is anticipated that, in many cases, the TIFIA credit instrument will be junior (i.e., subordinate) to the project's capital markets debt in its priority claim on the project's cash flow. However, in the event of bankruptcy, insolvency, or liquidation, the DOT must have a parity claim with respect to other creditors on the project's pledged security. The credit agreement will clearly specify the DOT's interest in the pledged security relative to the interests of any other creditors.

The TIFIA statute places two other important limits on the Government's exposure to credit risk. First, TIFIA assistance must not exceed 33 percent of total eligible project costs. This is to ensure that the DOT shares the credit risk with other participants. Second, a project's senior debt obligations must receive an investment-grade rating (Baa3/BBB-or higher) as a condition for disbursement of TIFIA funds. Chapter 3 provides further details on eligible project costs and rating opinions.

Section 2-2
TIFIA Credit Instruments

A summary of the main features of TIFIA direct loans, loan guarantees, and lines of credit follows. These features are established by statute. A more detailed explanation of the rules that govern how interest rates are set and funds are disbursed and repaid appears in Section 2-3.

Secured (Direct) Loans

A TIFIA direct loan is a debt obligation involving the DOT as the lender and a non-federal project sponsor as the borrower. Actual terms and conditions for a direct loan must be negotiated between the DOT and the project sponsor, but in general, the characteristics of a direct loan will include:

- <u>Use of Proceeds</u>. The proceeds of a direct loan must be used either to finance eligible project costs or to refinance interim construction financing of eligible project costs. In the latter case, the DOT loan may refinance existing debt no later than one year following substantial completion of the project.

- <u>Amount</u>. The principal amount of a direct loan, in combination with any other TIFIA credit assistance, may not exceed 33 percent of the reasonably anticipated eligible project costs.

- <u>Interest Rate</u>. The interest rate on a direct loan will be equal to or greater than the yield on marketable U.S. Treasury securities of comparable maturity on the date of execution of the credit agreement. The DOT currently determines the minimum TIFIA rate on a direct loan by adding five basis points to the rate for State and Local Government Securities (SLGS) of a similar maturity on that date, as published at http://www.publicdebt.treas.gov/spe/spehatch.htm. Irrespective of when scheduled debt service payments begin, interest begins accruing immediately upon the disbursement of funds from the DOT.

- <u>Timing of Disbursements</u>. The DOT disburses funds monthly, on a reimbursement basis, as costs are incurred for eligible project purposes. The credit agreement will specify a planned annual draw schedule, which can be amended as necessary.

- <u>Maturity</u>. The final maturity date of a direct loan must be no later than 35 years after the date of substantial completion of the project.

- Repayment Terms. Scheduled repayments must commence no later than five years after the date of substantial completion of the project. Level debt service is not required for project financings where pledged revenues are projected to increase over time. Debt service payments should be scheduled semi-annually.

- Deferrals. In the event that revenues are insufficient to meet scheduled TIFIA loan payments within the first 10 years after substantial completion of the project, the DOT, at its sole discretion, may allow payment deferrals. Any such payment deferrals shall be contingent on the project's meeting criteria established by the Secretary, including standards for reasonable assurance of repayment. However, there can be no assurance that the Secretary will exercise this authority to reschedule debt service with respect to any particular project. Thus, borrowers should negotiate a debt service schedule they are reasonably confident they can meet.

- Prepayment Conditions. A direct loan may be prepaid in whole at any time without penalty. The credit agreement may specify limitations on prepayment in part.

- DOT Lien Priority. In the event of bankruptcy, insolvency, or liquidation, the lien securing the direct loan shall be on parity with the lien securing the project's senior debt. This provision may be effected through a master trust agreement, an inter-creditor agreement, or other agreement entered into at the time of execution of the direct loan.

Loan Guarantees

A TIFIA loan guarantee is any guarantee or other pledge by the DOT to pay all or part of the principal of and/or interest on a loan or other debt obligation of a project sponsor (or "borrower") to a guaranteed lender. By statute, the guaranteed lender must be a "non-federal qualified institutional buyer" as defined in section 230.144A(a) of title 17, CFR, including qualified retirement plans and governmental plans. Prospective applicants and lenders should contact the DOT with any questions about what constitutes a "non-federal qualified institutional buyer."

Characteristics of a guaranteed loan include:

- Use of Proceeds. The proceeds of a guaranteed loan must be used either to finance eligible project costs or to refinance interim construction financing of eligible project costs. In the latter case, the guaranteed loan may refinance existing debt no later than one year following substantial completion of the project.

- Amount. The principal amount of a DOT loan guarantee, in combination with any other TIFIA credit assistance, may not exceed 33 percent of the reasonably anticipated eligible project costs.

- Interest Rate. The interest rate on a guaranteed loan will be negotiated between the guaranteed lender and the borrower, subject to consent from the DOT. Interest payments on a guaranteed loan are subject to federal income taxation.

- Maturity. The final maturity date of the guaranteed loan must be no later than 35 years after the date of substantial completion of the project.

- Repayment Terms. Scheduled repayments to the guaranteed lender must commence no later than five years after the date of substantial completion of the project. Level debt service is not required for project financings where the pledged revenues are projected to increase over time.

- Deferrals. In the event that revenues are insufficient to meet scheduled loan payments within the first 10 years after substantial completion of the project, the DOT may consent to payment deferrals and a rescheduling of the guaranteed debt service. Approval of any such payment deferrals shall be contingent on the project's meeting criteria established by the Secretary, including standards for reasonable assurance of repayment. However, there can be no assurance that the Secretary will exercise this authority to permit the rescheduling of debt service with respect to any particular project. Thus, borrowers should negotiate a debt service schedule they are reasonably confident they can meet.

- Prepayment Conditions. The prepayment features on a guaranteed loan will be negotiated between the guaranteed lender and the borrower, subject to consent from the DOT.

- Default Feature. In the event of an uncured borrower payment default, the guaranteed lender will receive payment from the DOT for the guaranteed payment then due. The DOT will seek recovery from the borrower of all funds advanced pursuant to a reimbursement agreement with the borrower, executed simultaneously with the execution of the loan guarantee agreement.

- DOT Lien Priority. In the event of bankruptcy, insolvency, or liquidation, the lien securing the guaranteed loan shall be on parity with the lien securing the project's senior debt. This provision may be effected through a master trust agreement, an inter-creditor agreement, or other agreement entered into at the time of execution of the guaranteed loan.

Lines of Credit

A TIFIA line of credit provides a standby source of funding in the form of contingent direct loans that may be drawn upon after substantial completion to supplement project revenues, if needed, during the first 10 years of the project's operations. The DOT acts as a lender only when certain conditions trigger the conversion of the line of credit into a direct loan. These conditions will be specified in the credit agreement.

Characteristics of a line of credit include:

- Use of Proceeds. The proceeds of a draw on a line of credit (i.e., the proceeds of a contingent direct loan) may be used only to pay debt service on project obligations (other than a TIFIA credit instrument) issued to finance eligible project costs, extraordinary repair and replacement costs, operation and maintenance expenses, and/or costs associated with unexpected federal or state environmental restrictions.

- Amount. The total principal amount of a line of credit, in combination with any other TIFIA credit assistance, may not exceed 33 percent of the reasonably anticipated eligible project costs.

- Annual Limitation on Draws. A maximum of 20 percent of the total principal amount of a line of credit may be drawn in any year. This 20 percent amount shall be calculated on the basis of the total principal amount of the line of credit on the date the line of credit is obligated.

- Condition Precedent for Draws. A draw may be made only if revenues from the project are insufficient to pay the costs enumerated in "Use of Proceeds."

- Availability. A line of credit may be available for a period of 10 years following substantial completion of the project.

- Interest Rate. The interest rate on a direct loan resulting from a draw on a line of credit will be equal to or greater than the yield on a 30-year marketable U.S. Treasury security on the date the line of credit is obligated. The DOT currently determines the minimum TIFIA rate on a direct loan resulting from a draw on a line of credit by adding five basis points to the rate for State and Local Government Securities (SLGS) of a 30-year maturity on that date, as published at http://www.publicdebt.treas.gov/spe/spehatch.htm. Irrespective of when scheduled debt service payments begin, interest begins accruing immediately upon the disbursement of funds from the DOT.

- Maturity. The final maturity date of a direct loan resulting from a draw on a line of credit must be no later than 35 years after the date of substantial completion of the project.

- Repayment Terms. Scheduled repayments of a draw on a line of credit must commence no later than five years after the end of the 10-year period of availability and be fully repaid no later than 25 years after the end of the 10-year period of availability. Level debt service is not required. Debt service payments should be scheduled semi-annually.

- Prepayment Conditions. A direct loan resulting from a draw on a line of credit may be prepaid in whole at any time without penalty. The credit agreement may specify limitations on prepayment in part.

- DOT Lien Priority. In the event of bankruptcy, insolvency, or liquidation, the lien securing the direct loan resulting from a draw on a line of credit shall be on parity with the lien securing the project's senior debt. This provision may be effected through a master trust agreement, an inter-creditor agreement, or other agreement entered into at the time of execution of the credit agreement.

Section 2-3
Taxation Issues

With regard to the TIFIA program, the TEA 21 Conference Report states:

> "The Conference recognizes that the Congress enacted the Deficit Reduction Act of 1984 provision prohibiting the combination of Federal guarantees with tax-exempt debt, because of concerns that such a double-subsidy could result in the creation of a 'AAA' rated security superior to U.S. Treasury obligations. Accordingly, any project loan backed by a loan guarantee as provided in TIFIA must be issued on a taxable basis….
>
> "...The Conferees are aware that present Federal income tax law prohibits the use of direct or indirect Federal guarantees in combination with tax-exempt debt (section 149(b) of the Internal Revenue Code of 1986). The TIFIA provisions of the conference agreement do not override or otherwise modify this provision of the Code."

The DOT urges all applicants, and particularly those intending to use tax-exempt bonds in connection with TIFIA loans or lines of credit, to consult with the Internal Revenue Service, the Department of the Treasury, or their bond counsel.

Section 2-4
TIFIA Program Funding

Like all other federal credit assistance programs, the TIFIA program is governed by the Federal Credit Reform Act of 1990 (FCRA), also known as "credit reform." The FCRA requires that prior to providing TIFIA credit assistance, the DOT establish a capital reserve, or "subsidy amount," to cover expected credit losses.

Congress has placed dual controls on the amount of annual TIFIA funding available. First, the TIFIA program has a limit on the total annual subsidy amount available (i.e., the amount of federal funding, or "budget authority," available to cover the expected credit losses associated with the provision of credit instruments that year, net of any fee income). This amount may be reduced annually by appropriations legislation. Second, there is a limit on the annual credit assistance amount (i.e., the principal amount that may be committed in the form of direct loans, guaranteed loans, and lines of credit). This amount is not affected by annual appropriations legislation. While the annual subsidy amount remains available for obligation in subsequent years if not used, the annual credit amount expires at the end of each fiscal year; it is not available in subsequent years if not used by the end of the fiscal year for which it is authorized. A summary of these authorized funding levels is presented below in Exhibit 2-B.

Exhibit 2-B: TIFIA Funding Levels

Fiscal Year	Authorized Subsidy Amount (Budget Authority)	Maximum Principal Credit Assistance Amount
FY 1999	$80,000,000	$1,600,000,000
FY 2000	$90,000,000	$1,800,000,000
FY 2001	$110,000,000	$2,200,000,000
FY 2002	$120,000,000	$2,400,000,000
FY 2003	$130,000,000	$2,600,000,000
TOTAL	**$530,000,000**	**$10,600,000,000**

The amount of budget authority available in a given year to fund capital reserves for TIFIA credit instruments is subject to several factors, as described below.

- Federal-aid highway obligation limitation. This obligation limitation pertains to most of the programs funded from the Federal Highway Trust Fund (as is the TIFIA program) and is determined through the appropriations process each year.

- Program administration expenses. The TIFIA statute authorizes the DOT to use up to $2,000,000 of the authorized budget authority in each of fiscal years 1999 through 2003 to administer the TIFIA program.

- Future-year reservations. As discussed later, in Chapter 6, the DOT may in rare circumstances make future-year contingent commitments of budget authority. The DOT would make a future year reservation of funds only when the project seeking such commitment had met all TIFIA eligibility requirements and been partially funded out of the current fiscal year's program. In this case, a portion of future-year budget authority would be administratively reserved for the project. To ensure additional projects' access to the program in future years, the DOT would never reserve more than 50 percent of the amount of budget authority authorized for a single fiscal year.

- Carry-over resources. Any budget authority made available but not consumed in previous fiscal years may carry over and increase the amount of budget authority available in a given fiscal year.

Section 2-5
Additional Information on Funding

Appendix B provides more detail on the funding mechanics and budget scoring for the TIFIA program. The appendix also contains information on the DOT's approach to measuring credit risk for individual TIFIA credit instruments.